

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HENDRIK BLOCK,

Plaintiff,

v.

JASKIRAT KAUR BRAR,

Defendant.

No. 1:22-cv-01317-ADA-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(ECF Nos. 8, 10, 13)

On October 14, 2022, Plaintiff Hendrik Block (“Plaintiff”) filed this action against Defendant Jaskirat Kaur Brar (“Defendant”), individually and doing business as Mega Liquor, asserting claims for violations of the American with Disabilities Act, California Unruh Civil Rights Act, and denial of full and equal access to public facilities pursuant to California Health and Safety Codes §§ 19953 *et seq.* (ECF No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Since Defendant did not respond to the complaint, on December 22, 2022, Plaintiff filed a request for entry of default. (ECF No. 5.) On December 23, 2022, the Clerk of Court entered default against Defendant. (ECF No. 6.) On February 8, 2023, Plaintiff filed the instant motion for default judgment against Defendant. (ECF No. 8.) On March 16, 2023, the assigned Magistrate Judge issued findings and recommendations, recommending that Plaintiff’s motion for default judgment be denied for inadequate service of the summons and complaint. (ECF No. 10.) The

1 findings and recommendations contained notice that any objections thereto were to be filed within
2 fourteen days after service. (*Id.* at 14.) On March 29, 2023, the Defendant filed a notice of change
3 of address. (ECF No. 12.) On March 30, 2023, Plaintiff timely filed objections to the findings and
4 recommendations. (ECF No. 13.)

5 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(c), this Court has conducted a
6 *de novo* review of the case. Having carefully reviewed the entire file, including Plaintiff's
7 objections, the Court finds that the findings and recommendations are supported by the record and
8 proper analysis.

9 In his objections, Plaintiff argues that since Defendant filed a notice of change of address
10 with the Court on March 29, 2023, this is clear "evidence that Defendant has received notice of this
11 action." (ECF No. 13 at 1.) Plaintiff also argues that Defendant was served pursuant to Federal
12 Rule of Civil Procedure 4(e)(2)(B) "which permits leaving the document at the defendant's
13 residence with someone of suitable age and discretion who resides there" and that the statute does
14 not have a "due diligence" prerequisite; thus, Defendant was properly served. (*Id.* at 2.)

15 The Court is unpersuaded by Plaintiff's objections for several reasons. First, actual notice
16 of a lawsuit is not the same as proper service. *See Direct Mail Specialists, Inc. v. Eclat*
17 *Computerized Techs., Inc. (Direct Mail)*, 840 F.2d 685, 688 (9th Cir. 1988) quoting *Benny v. Pipes*,
18 799 F.2d 489, 492 (9th Cir. 1986) (stating that "without substantial compliance with Rule 4, 'neither
19 actual notice nor simply naming the defendant in the complaint will provide personal
20 jurisdiction'").

21 Second, the Court agrees with the Magistrate Judge that Plaintiff has failed to properly
22 effect service on Defendant. It is true that pursuant to Federal Rule of Civil Procedure 4(e)(2)(B),
23 a plaintiff need not show an inability to obtain service by personal delivery to the defendant before
24 doing substitute service. *See Fed. R. Civ. Pro. 4(e)(2)(B)*. However, the requirement that the
25 recipient of the summons and complaint be someone "who resides there" has long been held to
26 mean that the recipient must be actually living in the same place as the defendant who is to be
27 served. *Hill v. City of Detroit*, No. 11-10413, 2011 WL 2694540, at *1 (E.D. Mich. July 12, 2011);
28 *United States v. Rose*, 437 F. Supp. 2d 1166, 1172 (S.D. Cal. 2006) (stating that where substitute

1 service is used, the person with whom the summons is left must also be a resident of the “usual
2 place of adobe”). As the Magistrate Judge explained, the service affidavit’s statement that Jane
3 Doe is “a competent member of [Defendant’s] household,” (ECF No. 4 at 2), does not make it clear
4 to the Court that Jane Doe was actually residing at Defendant’s usual place of abode. (ECF No. 10
5 at 10.) The Plaintiff does not include any facts to describe how substitute service was completed
6 or describes facts to support the process server’s determination that Jane Doe was a “member of
7 the household,” making the statement wholly conclusory and even appears boilerplate. (*Id.*)

8 The Court also agrees with the Magistrate Judge that “[b]ecause the process server was
9 unable to so much as ascertain Doe’s identity, it remains unclear how the process server was able
10 to confirm other information critical to effecting substitute service, such as whether Doe was a co-
11 occupant of the household—rather than, for example, a visitor—or whether Doe spoke English, so
12 as to be a ‘competent’ member of the household.” (*Id.* at 11.) Further, “[o]nce service is
13 challenged, plaintiffs bear the burden of establishing that service was valid under Rule
14 4.” *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004) (citations omitted). Due to the lack of
15 facts in Plaintiff’s motion for default judgment, the Court agrees with the assigned Magistrate Judge
16 that Plaintiff has failed to carry his burden of establishing that service was proper under Rule 4.

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1 Accordingly,

- 2 1. The findings and recommendations issued on March 16, 2023, (ECF No. 10), are
3 ADOPTED in FULL; and
4 2. Plaintiff Hendrik Block's motion for default judgment, (ECF No. 8), is DENIED.
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7 IT IS SO ORDERED.

8 Dated: July 26, 2023


UNITED STATES DISTRICT JUDGE